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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1432

DIRECT MAIL ADVERTISING ASSOCIATION, INC.,
ASSOCIATED THIRD CLASS MAIL USERS,
GEM INTERNATIONAL, INC.,
Petitioners,

v.

UNITED STATES POSTAL SERVICE, *et al.*,
Respondents.

REPLY BRIEF FOR PETITIONERS

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The Government's Memorandum in Opposition fails to deal with the arguments in the Petition. Instead, the Government merely recites certain statements by the Court of Appeals and concludes with the assertion that there is "no basis in the Act or its legislative history" to apply the phasing requirement to temporary rates. (Memorandum in Opposition, p. 4). This assertion is manifestly incorrect.

First, as the Court of Appeals noted, both the Act and its legislative history show a clear purpose to cushion rate increases through phasing.

Second, to get around this explicit Congressional policy, both the Court of Appeals and the Government refer to the fact that the temporary rate section appears in a different subchapter from the phasing provision. But the Act explicitly provides that "an inference of legislative construction is not to be drawn by reason of a

chapter [in the Act] in which a section is placed nor by reason of its caption or catchline." Postal Reorganization Act §11(b), Pub. L. 91-375.

Third, phasing is mandated by Section 3626 of the Act. It relates to the *timing*, not the amount, of a requested rate increase. Thus, to say, as does the Government, that the Act's limitation of temporary rates to the "rate requested" permits imposition of an unphased rate sidesteps the primary question at issue—whether as a matter of law, and in view of Congress' explicit intent to cushion the impact of rate increases, temporary rates must be timed in accordance with the phasing requirement. Resolution of this question is of substantial importance in determining the degree of unilateral and unregulated power which the new Postal Reorganization Act intended to confer on the Postal Service, this country's largest monopoly.

Respectfully submitted,

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